

CHAPTER 72

POSSESSION OR RECEIPT OF FIREARMS — MENTAL HEALTH COMMITMENTS OR ADJUDICATIONS

S.F. 456

AN ACT relating to persons prohibited from possessing or receiving firearms because of mental health commitments or adjudications and to petitions for relief from such prohibitions, and including effective date and applicability provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 724.31, Code 2011, is amended by striking the section and inserting in lieu thereof the following:

724.31 Persons subject to firearm disabilities due to mental health commitments or adjudications — relief from disabilities — reports.

1. When a court issues an order or judgment under the laws of this state by which a person becomes subject to the provisions of 18 U.S.C. § 922(d)(4) and (g)(4), the clerk of the district court shall forward only such information as is necessary to identify the person to the department of public safety, which in turn shall forward the information to the federal bureau of investigation or its successor agency for the sole purpose of inclusion in the national instant criminal background check system database. The clerk of the district court shall also notify the person of the prohibitions imposed under 18 U.S.C. § 922(d)(4) and (g)(4).

2. A person who is subject to the disabilities imposed by 18 U.S.C. § 922(d)(4) and (g)(4) because of an order or judgment that occurred under the laws of this state may petition the court that issued the order or judgment or the court in the county where the person resides for relief from the disabilities imposed under 18 U.S.C. § 922(d)(4) and (g)(4). A copy of the petition shall also be served on the director of human services and the county attorney at the county attorney's office of the county in which the original order occurred, and the director or the county attorney may appear, support, object to, and present evidence relevant to the relief sought by the petitioner.

3. The court shall receive and consider evidence in a closed proceeding, including evidence offered by the petitioner, concerning all of the following:

a. The circumstances surrounding the original issuance of the order or judgment that resulted in the firearm disabilities imposed by 18 U.S.C. § 922(d)(4) and (g)(4).

b. The petitioner's record, which shall include, at a minimum, the petitioner's mental health records and criminal history records, if any.

c. The petitioner's reputation, developed, at a minimum, through character witness statements, testimony, and other character evidence.

d. Any changes in the petitioner's condition or circumstances since the issuance of the original order or judgment that are relevant to the relief sought.

4. The court shall grant a petition for relief filed pursuant to subsection 2 if the court finds by a preponderance of the evidence that the petitioner will not be likely to act in a manner dangerous to the public safety and that the granting of the relief would not be contrary to the public interest. A record shall be kept of the proceedings, but the record shall remain confidential and shall be disclosed only to a court in the event of an appeal. The petitioner may appeal a denial of the requested relief, and review on appeal shall be de novo. A person may file a petition for relief under subsection 2 not more than once every two years.

5. If a court issues an order granting a petition for relief filed pursuant to subsection 2, the clerk of the court shall immediately notify the department of public safety of the order granting relief under this section. The department of public safety shall, as soon thereafter as is practicable but not later than ten business days thereafter, update, correct, modify, or remove the petitioner's record in any database that the department of public safety makes available to the national instant criminal background check system and shall notify the United States department of justice that the basis for such record being made available no longer applies.

Sec. 2. APPLICABILITY. The state court administrator shall coordinate with the department of public safety to forward only such information as is necessary to identify a person subject to an order or judgment specified in section 724.31, subsection 2, for any such order or judgment that was issued prior to the effective date of this Act, and which is available electronically in the Iowa court information system. Such information shall be forwarded to the department of public safety, which in turn shall forward the information to the federal bureau of investigation or its successor agency for the sole purpose of inclusion in the national instant criminal background check system database, as soon as practical, but not later than December 31, 2011. Within five days of completion of the forwarding of information required by this section of this Act, the department of public safety shall give notice to the Code editor that the requirements of this section of this Act have been fulfilled.

Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of immediate importance, takes effect upon enactment.

Approved April 19, 2011